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Technology Contracts (Software as a Service)

What to Know Before You Sign

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THREE THEMES

- What are you buying?... Get the value added you expect.
- Who owns what?... Manage your property.
- Why does it matter?... Ensure liabilities trace back to responsibilities.



Software as a Service or SaaS

- Cloud computing
- Convenience
- Reduced cost*
- Vendor provides security**
- Removes need for customer hardware
- Applications managed by vendor

*True cost of subscription; less capital costs (i.e. IT staff)

**Third-party host; data protection policies; legal compliance



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Value Expected vs. Value Delivered

“Faster than a speeding bullet. More powerful than a locomotive. Able to leap tall buildings in a single bound.”

“It’s a bird! It’s a plane! It’s Superman!”

Adventures of Superman



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What Are You Buying

Product or Service?

- Functionality

According to written specifications (vs. workmanship)

Stand-alone

Requires add-ons

Integration

Does your infrastructure support it?

Does it communicate with other programs?

Support and maintenance



What Are You Buying (cont'd)

- Warranties

Development based on specifications

Completion date

NOT “as-is”

Title/License grant

No infringement

Data protection



Who Owns What?

Property

- The Product/Technology
 - Modifications
- The Deliverables
 - Templates
 - Raw Data
 - Work Product



Who Owns What? (cont'd)

- In Aggregate and Anonymized
 - For what purpose?
 - Revocable?
 - Audit rights
- Feedback
- Can you take it with you?/Portability
 - By when?
 - In what form?



Why it Matters

Performance

- Service Level Expectations... Get the product/service you expect
- In all material respects
- In accordance with documentation
- Includes updates... Updates cannot decrease base service



Why it Matters (cont'd)

Liabilities

- Infringement

 - Third-party rights

 - Reliance on open source?

 - Any customization?

 - Damages

- Indemnity

 - Limitations



Why it Matters (cont'd even more!)

- Data security

 - Compliance with applicable laws and regulations

 - Privacy requirements (State, Federal, and International)

 - Damages



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